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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,348	02/10/2004	Craig W. Roddy	HES 2004-IP-013208U1	1181
28857	7590	11/23/2005	EXAMINER	
CRAIG W. RODDY HALLIBURTON ENERGY SERVICES P.O. BOX 1431 DUNCAN, OK 73536-0440			SUCHFIELD, GEORGE A	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/775,348

Applicant(s)

RODDY, CRAIG W.

Examiner

George Suchfield

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 27, 29-38 and 40-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26, 28 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-70 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/1/04; 8/11/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-26, 28 and 39, drawn to a method of cementing a well, classified in class 166, subclass 293.
  - II. Claims 27, 29-38 and 40-70, drawn to a composition and methods of preparing, classified in class 507, subclass 269.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of or prepared by the Group II invention could be used in processes other than cementing a well, e.g., as a component of a concrete for use in building, highway or dam construction, or treating other permeable media, such as a soil remediation or consolidation process.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Craig W. Roddy on November 17, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-26,

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28 and 39. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27, 29-38 and 40-70 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 9, 11-13, 17, 19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2, and 11-13 are deemed indefinite insofar as they fail to include at least one positively-recited step. In this regard, the recitation, e.g., "used as a drilling fluid" or "used as a proppant" fails to comprise a positively-recited step. Moreover, it is not clear exactly how the hydrated cement particulates as "used" in the recited manner(s). Also with respect to claim 13, it is not seen that the hydrated cement particulates, per se, can be "used as a cement composition" since the cement particulates are already hydrated and would thus, not be further settable.

Claim 9 is deemed indefinite with respect to the recitation "another admixture" insofar as there is no first or initial mixture recited.

Claims 5, 17, 19 and 21 are deemed indefinite in being drawn to improper Markush groupings. As noted in MPEP Section 2173.05(h), the use of the term "comprising" or "comprises" is improper in setting forth the Markush grouping. Accordingly, in line 1 or 2 of each of these claims, the transitional phrase "comprises" must be changed to, -- is selected from the group consisting of -- or -- is -- .

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Although not indefinite, it is noted that claims 28 and 39 will need to be rewritten into independent form since their respective parent claims 27 and 38 are presently drawn to the non-elected invention.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-26, 28 and 39 are rejected under 35 U.S.C. 102(a) as being anticipated by Berke et al (6,648,962).

Berke et al discloses processes of using an aqueous cementing composition which includes hydrated cement particulates in admixture with a hydraulic cement in the overall cementing slurry. One of the applications or processes of using such cementing composition is in the cementing of oil wells (note col. 8, lines 6-15), as called for in claims 1, 13 and 14.

As per claim 2, the oil well cementing composition or slurry of Berke et al is deemed to comprise a “completion fluid” or “workover fluid”, as broadly recited, since the overall cementing process will inherently complete or “workover” the well.

As per claims 3, 6, 18 and 22, clearly the cementing composition and/or the hydrated cement particulates comprises an “admixture”; the recited relative amounts and ranges of hydrated cement particulates to hydraulic cement in claims 7 and 23 are deemed encompassed by

the corresponding hydrated cement particulates to cement ranges of Berke et al (note col. 10, lines 22-32).

The steps of preparing the hydrated cement particulates as recited in claims 4 and 20 are clearly set forth in Berke et al (note col. 5, lines 37-46); and which result in the hydrated cement particulates size range of claims 10 and 26.

The cements recited in claims 5, 17 and 21 are clearly set forth in Berke et al, such as Portland cement.

As per claims 8, 9, 24 and 25 Berke et al also calls for coating the hydrated cement particulates (note col. 3, lines 22-32).

As per claims 11 and 39, it is deemed that the hydrated cement particulates will inherently or necessarily comprise a "density-varying" or density-affecting additive insofar as the density of the hydrated cement particulates will vary from the overall oil well cementing composition depending on, e.g., the particular hydraulic cement and slurry medium utilized.

As per claim 12, in the event there are any natural protrusions or fractures in the penetrated formation, or any fractures which may be formed during the drilling/cementing operation, the cementing composition will inherently fill and plug such fractures/opening, and thus the hydrated cement particulates will comprise a "proppant". Moreover, as noted above, no positively-recited steps are set forth relating to a fracturing process.

As per claim 16, insofar as the cementing composition applied in the oil well cementing process of Berke et al appears to correspond to the recited cementing composition in applicant's process, it is deemed that the cementing composition of Burke et al will inherently or necessarily possess a density within the recited range.

As per claim 19, one or more of these components or additives is also incorporated into, and/or coated onto, the hydrated cement particulates included in the cementing composition utilized in the oil well cementing process of Berke et al.

As per claim 28, it is deemed that the hydrated cement particulates will inherently or necessarily comprise and function as a fluid loss agent within the overall oil well cementing slurry or composition, by virtue of its particle/particulate constituency and/or the mixture of size ranges within the hydrated cement particulates.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

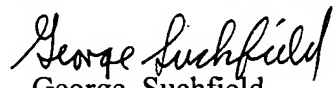
Other references disclose processes of cementing or treating a well utilizing hydrated cement particulates (note Powers et al (3,366,177)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Suchfield whose telephone number is 571-272-7036. The examiner can normally be reached on M-F (6:30 - 3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
George Suchfield  
Primary Examiner  
Art Unit 3676

Gs  
November 18, 2005